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October 25, 2002

VIA ELECTRONIC FILING

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Notice of Ex Parte Presentations in CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, and NSD File No. L-00-72.

Dear Ms. Dortch:

On October 24, 2002, F.J. Pollak (CEO of TracFone Wireless, Inc. ("TracFone")), Richard Salzman (General Counsel of TracFone), Nancy Boocker and I, on behalf of TracFone had separate meetings with Matthew Brill in the Office of Commissioner Abernathy, Dan Gonzalez in the Office of Commissioner Martin, and Chris Libertelli in the Office of Chairman Powell. Attached is a copy of the handout used at these meetings, except that the last page has been added to illustrate a point that came up during our meetings. This last issue is described more fully below.

During these meetings, we discussed TracFone's support for the continuation of a revenue-based universal service contribution methodology with modifications to fix some of the problems with the current methodology. Specifically, TracFone supports the use of current, rather than historic revenues and elimination of the artificially low wireless safe harbor, which allows wireless carriers with interstate usage above the fifteen percent safe harbor threshold to avoid paying their fair share of USF contributions based on their actual interstate revenues. TracFone presented data, which is included in the attached presentation used in the meetings, which shows that a revenue-based methodology will provide adequate funding if wireless carriers contribute to USF based on their actual interstate revenues (or, at least, based on a revised safe harbor which bears a reasonable relationship to those carriers' actual interstate revenues).

TracFone reiterated the fact that wireless carriers have the capability of determining actual interstate revenues. Indeed, most wireless carriers routinely identify originating and terminating locations of specific calls on their customer invoices. TracFone suggests a methodology that relies on the location of the initial cell site associated with the caller. Although such an approach might not correctly identify the jurisdiction of the call in every case, it would be accurate for the vast majority of wireless calls and is easily captured by carriers. The terminating location is easily determined for calls to wireline telephones. For calls that terminate on wireless handsets, the location of terminating cell site (if available) should be used and where the location of the terminating cell site is unavailable, the location of the terminating wireless switch could be used.

TracFone also discussed the need for special treatment of prepaid wireless carriers if the Commission were to adopt a connection-based methodology despite TracFone's legal and policy objections and those of other parties. TracFone has previously presented a proposal in this proceeding that recognizes the unique aspects of the prepaid wireless industry and would impose a monthly charge of $.18 for each prepaid wireless handset that has interstate use during the preceding month.

During yesterday's meetings, TracFone learned that the Commission is considering a proposal from staff that does not address those special circumstances of the prepaid wireless industry. We understand that the decision not to recommend a special provision for the prepaid wireless industry segment relies on the argument that such a provision would somehow not be competitively neutral and would discriminate in favor of prepaid wireless carriers and against other providers of telecommunications services. TracFone respectfully submits that there is no factual support for those concerns about discrimination or that adoption of TracFone's proposal would somehow bestow a competitive advantage on prepaid wireless providers. In contrast, as explained below, adoption of a connection charge without addressing the unique situation involving prepaid wireless providers would result in a blatant and unnecessary discrimination against those providers and their customers.

There are two reasons why adoption of the TracFone proposal for prepaid wireless carriers would not constitute discrimination or result in a competitive advantage. First, prepaid wireless services are provided by most wireless carriers, including all of the major wireless providers. To the extent that those carriers' prepaid services generate low volumes of interstate calling all carriers offering such services would be eligible to have their prepaid services subject to the special universal service funding plan for prepaid wireless services proposed by TracFone. In reality, it would be highly unlikely for customers who use large volumes of wireless service and who are on monthly plans which include significant quantities of included minutes of use to switch to prepaid plans with their significantly higher per-minute rates and term service commitments solely to avoid higher universal service contribution fees. In the event that some small number of post-paid wireless users decide to switch to prepaid service in order to take advantage of lower universal service fees, these users would not necessarily purchase TracFone service. Wireless users have a choice of prepaid wireless service providers because the major post-paid providers also offer prepaid services. Traditional wireless carriers would have the opportunity of keeping customers who want to switch to a prepaid plan.

Moreover, TracFone and similarly situated providers would face a significant competitive disadvantage if they were required to pay a flat monthly connection-based charge. As TracFone has explained in its comments in this proceeding and in meetings with Commission staff, it does not have the capability to pass through a connection-based charge because it does not send a monthly bill to its customers and a customer's account is maintained in the customer's wireless handset rather than a carrier switch. Therefore, TracFone would be forced to increase its per-minute rates while its more traditional wireless competitors enjoy the ability to maintain lower per-minute rates and to pass through the connection-based charge with a myriad of other additional fees and taxes that are not included in the advertised rates of the traditional wireless carriers.

In addition, TracFone's customers would be significantly disadvantaged by a regressive connection-based fee because companies like TracFone focus their services on low-volume and low-income users. A flat connection-based charge will have a much greater impact on customers with very little usage, and particularly low interstate usage, rather than business users with very high interstate usage. For example, TracFone customers average about 4-5 minutes of interstate calling a month. Under the $1.00 per line per month connection charge proposal, a TracFone customer using 4.5 minutes of interstate service per month would be subject to a $.22 surcharge for each minute of interstate use. In contrast, according to publicly-available information, major wireless providers whose services are focused on large business users average 650 minutes of use per month. Assuming that thirty percent of those minutes of use are for interstate services, those carriers' customers would be subject to a per interstate minute of use universal service surcharge of $0.00513 – about one-half of one cent per interstate minute of use. It is difficult to imagine a less competitively neutral and more discriminatory universal service funding plan than a plan which would subject customers of providers who serve mainly low-volume lower income users to pay more than forty-two times the amount paid by large business customers of the major carriers on a per interstate minute of use basis! This point is illustrated in the last slide of the attachment, which has been added to the presentation used in our meetings.

Pursuant to Section 1.1206(b) of the Commission's Rules, this notice is being filed electronically in the above-captioned dockets. If you have any questions regarding this matter, please feel free to contact undersigned counsel for TracFone Wireless.

Sincerely,

Mitchell F. Brecher

Attachment

cc: Mr. Matthew Brill
Mr. Dan Gonzalez
Mr. Chris Libertelli
Mr. Ms. Vickie Byrd
Mr. Paul Garnett
Ms. Diane Law Hsu
Mr. Bill Maher
Ms. Carol Mattey
Ms. Jessica Rosenworcel
Mr. Jonathan Secrest

TracFone Wireless, Inc.

Ex Parte Presentation

October 2002

CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, 98-170, and NSD File No. L-00-72.

Revenue-Based Methodology Should Be Retained, With Modifications

- **Wireless safe harbor should be eliminated.**
- **Contributions should be based on current revenues.**
- **Eventually, Commission should broaden the base of contributors to include all providers of interstate telecommunications.**
- **Commission precedent supports the elimination of unnecessary usage estimates when actual measurements are available.***

**See* MTS and WATS Market Structure, CC Docket No. 78-72, Phase I, 102 FCC 2d 849 (1985) (Commission replaced flat rated Feature Group A access charges, which were based on an "industry average" of 9000 minutes a month, with a usage based rate).

Wireless Safe Harbor Is Not Necessary

- **Wireless carriers have originating (by cell site) and terminating locations and often show that information on bills. In the vast majority of cases, this information can be used to determine which calls are interstate.**

- **The record indicates that actual wireless interstate usage is greater than the 15 percent safe harbor.***

- **If the Commission wishes to retain a safe harbor, it should be increased based on *current* levels of interstate CMRS revenues.**

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*CTIA Ex Parte, filed September 30, 2002.

Potential Impact of Removal of Safe Harbor on Wireless USF Contribution Base

	Wireless 15 Percent Interstate	Wireless 20 Percent Interstate	Wireless 25 Percent Interstate	Wireless 30 Percent Interstate	Wireless 35 Percent Interstate
2001 Contribution Base*	$12.392 billion	$16.523 billion (increase of $4.131 billion)	$20.654 billion (increase of $8.262 billion)	$24.785 billion (increase of $12.393 billion)	$28.916 billion (increase of $16.524 billion)
2002 Contribution Base*	$12.929 billion	$17.239 billion (increase of $4.31 billion)	$21.549 billion (increase of $8.62 billion)	$25.858 billion (increase of $12.929 billion)	$30.168 billion (increase of $17.239 billion)
2003 Contribution Base*	$14.378 billion	$19.171 billion (increase of $4.793 billion)	$23.964 billion (increase of $9.586 billion)	$28.756 billion (increase of $14.378 billion)	$33.549 billion (increase of $19.171 billion)
2004 Contribution Base*	$15.687 billion	$20.916 billion (increase of $5.229 billion)	$26.146 billion (increase of $10.459 billion)	$31.375 billion (increase of $15.688 billion)	$36.604 billion (increase of $20.917 billion)
2005 Contribution Base*	$16.681 billion	$22.241 billion (increase of $5.56 billion)	$27.802 billion (increase of $11.121 billion)	$33.362 billion (increase of $16.681 billion)	$38.922 billion (increase of $22.241 billion)

*Contribution base is calculated using the following Yankee Group annual wireless service revenue estimates: $82.616 billion for 2001; $86.195 billion for 2002; $95.855 billion for 2003; $104.582 billion for 2004; $111.206 for 2005.

Potential Dollar Increase in USF from Removal of Safe Harbor

	Wireless 20 Percent Interstate	Wireless 25 Percent Interstate	Wireless 30 Percent Interstate	Wireless 35 Percent Interstate
2002 Funding Year	$314 million	$628 million	$941 million	$1.26 billion
2003 Funding Year	$349 million	$698 million	$1.05 billion	$1.40 billion
2004 Funding Year	$381 million	$761 million	$1.14 billion	$1.52 billion
2005 Funding Year	$405 million	$810 million	$1.21 billion	$1.62 billion

NOTE: This chart calculates contribution increases based on the current contribution factor of 7.2805 percent.

Discriminatory Impact of $1 Connection-Based Charge on TracFone Subscribers Compared to Subscribers of Other Wireless Carriers

- **TracFone Customers average 4.5 interstate minutes per month.**
- **A $1 monthly connection charge would result in a typical TracFone customer paying $.22 per minute of interstate usage to the Universal Service Fund.**
- **Nextel has reported that it has an average customer usage of approximately 650 minutes per month.**
- **Assuming an average of 30 percent interstate usage, the average Nextel customer would have 195 interstate minutes per month.**
- **Thus, the $1 monthly connection charge would result in the typical Nextel customer paying half a penny per minute of interstate usage to the Universal Service Fund.**